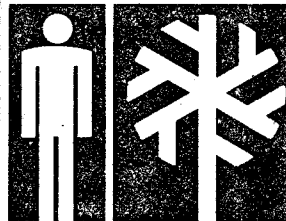


basic information
on
cultural resource management
january 1981 (Revised)

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NATIONAL PARK SERVICE



UNITED STATES DEPARTMENT OF THE INTERIOR

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Prepared by:

**THE COMPLIANCE STAFF OF THE
DIVISION OF LEGISLATIVE COMPLIANCE
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Because its system includes many historic and prehistoric sites, monuments, and parks, it is well known that the National Park Service is committed to the preservation and protection of historic as well as natural resources. What is often not understood is that this commitment is more than a "moral obligation," but a legal requirement that the National Park Service shares with all federal agencies. All agencies in the federal government are legally required to survey their lands for cultural resources, evaluate the significance of these resources, and carefully consider the effects of proposed undertakings upon them. The laws which fix these responsibilities apply not only to designated historic or archeological parks, but to all federal lands. In addition, the National Park Service is responsible for the effects of its projects on cultural resources in or eligible to be in the National Register of Historic Places when these resources are located on non-federal lands.

If you exceed the speed limit and are stopped you face the imposition of a penalty. Certainly there are other arguments which can be made for the observation of the speed limit such as safety, or fuel economy. A violation of the law will generally mean the imposition of a sanction, in the case of speeding a fine. The same is true of compliance with environmental and cultural resource laws. No matter what arguments, pro or con are made, one fact cannot be ignored. It is the law. The result of violations of these laws is a penalty in terms of both time and money. Documents which violate laws or regulations need rewriting. Actions which are not in compliance are stopped. And, in the end the professionalism of the NPS and DSC is questioned when noncompliance causes loss or delay.

Historic preservation and environmental laws should not be seen as an obstacle to be jumped over at the end of a process. These laws, policies and regulations constitute the bedrock of the planning process and should be an integral part of all planning, design and construction activities.

Following is a summary of some of the pertinent federal legislation concerning cultural resource management and a glossary of terms you will need to be familiar with to understand the compliance process. In terms of Denver Service Center responsibilities, the 1966 Historic Preservation Act; the National Environmental Policy Act (NEPA); Executive Order 11593; and 36 CFR 800 (the regulations for the Protection of Historic and Cultural Properties: 1979) are of particular importance.

It is impossible in the space of a few pages to answer all questions regarding cultural resources management and compliance procedures. The below-listed members of the Compliance Office staff are always willing to handle any questions you may have. Try us--you'll like us!

Glennie Murray Wall	<u>Special Field</u> History, Administration
Mike Bureman	History
Craig Cellar	Archeology
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The Antiquities Act of 1906

(Public Law 59-209, 34 STAT. 225; 16 U.S.C. 431-433): This act sets forth the basic principle that the federal government, acting for all the people, should work toward the protection, preservation, and public availability of the nation's historic and prehistoric archeological resources. With accompanying guidelines, the act provides for federal control of all archeological resources on federally-owned or controlled land and established a permit system for investigating them.

The Historic Sites Act of 1935

(Public Law 74-292, 49 STAT. 666; 16 U.S.C. 461-467): This act declares it to be national policy to preserve for the public, historic (including prehistoric) sites, buildings, and objects of national significance. The National Park Service is directed to "make necessary investigations and researches in the United States relating to particular sites...or objects to obtain true and accurate historical and archeological facts and information concerning the same."

The Reservoir Salvage Act of 1960

(Public Law 86-523, 74 STAT. 220; 16 U.S.C. 469-469c): This act requires that before any agency of the United States shall undertake the construction of a dam or issue a license for construction of a dam (greater than 500 acre feet or 40 surface acres of capacity), it shall provide written notice to the Secretary of the Interior. (The provisions of the act apply regardless of the size of the reservoir if the constructing agency finds or is presented with evidence that archeological resources are affected.) The Secretary of the Interior shall cause a survey to be made and, if deemed necessary, shall cause the necessary research to be conducted as expeditiously as possible.

The National Historic Preservation Act of 1966

(Public Law 89-665, 80 STAT. 915; 16 U.S.C. 470): This act sets forth the basic concern of the nation for the preservation of its heritage. It provides for a National Register of districts, sites, buildings, structures, and objects significant in American history, architecture, archeology, and culture and makes provision for matching funds to the states to help acquire and/or preserve these resources. It also provides matching funds to the states to conduct cultural resource surveys for nomination of eligible properties to the National Register.

Under this law, if a site is in or eligible for the National Register, this fact must be taken into consideration when any project utilizing federal funds or under federal permit might affect it. The sheer number of archeological sites and the fact that no survey can locate all significant sites (e.g., because of thick ground cover, or because sites are buried) means that in no case can the National Register be viewed as the sole source for information about the presence of potentially significant sites to be taken into consideration before or during land alteration or for the purpose of an adequate environmental impact statement.

Section 106 of this act requires that the President's Advisory Council on Historic Preservation be afforded an opportunity to comment on any undertaking which affects properties listed on the National Register or eligible for listing on the National Register.

The National Environmental Policy Act of 1969

(Public Law 91-190, 31 STAT. 852; 42 U.S.C. 4321-4347): This act declares that it is the policy of the federal government to use all practical means, consistent with other essential considerations of national policy, to--among other things--improve and coordinate federal plans, function, programs, and resources to the end that the nation may preserve important historic, cultural, and natural aspects of our heritage. It directs that, to the fullest extent possible, the policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the Act and that all agencies shall utilize a systematic interdisciplinary approach that will insure the integrated use of the natural and social sciences and the environmental design arts in planning and decisionmaking which may have an impact on man's environment. It further requires that on all federally-sponsored or licensed projects which significantly affect the environment, the responsible official submit an environmental impact statement which assesses the impact of the proposed action and any unavoidable adverse environmental effects (which consistently has been interpreted to include those on archaeological and historic resource), and sets forth the alternatives to the project, the long and short term results, and any irreversible and irretrievable commitment of resources.

The act also established the Council on Environmental Quality in the Executive Branch to advise and assist the President in carrying out the provisions of the act in reviewing environmental impact statements.

The regulations for implementing the procedural provision of NEPA are found at 40 C.F.R. Parts 1500-1508. These regulations must be followed in the preparation of statements required by NEPA.

Executive Order 11593

In this Executive Order it is decreed that "The Federal Government shall provide leadership in preserving, restoring and maintaining the historic and cultural environment of the nation. Agencies...shall (1) administer the cultural properties under their control in a spirit of stewardship and trusteeship for future generations, (2) initiate measures necessary to direct their policies, plans and programs in such a way that federally-owned sites, structures, and objects of historical, architectural or archeological significance are preserved, restored and maintained for the inspiration and benefit of the people, and (3) in consultation with the Advisory Council on Historic Preservation (16 U.S.C. 470i), institute procedures to assure that federal plans and programs contribute to the preservation and enhancement of non-federally-owned sites, structures and objects of historical, architectural or archeological significance."

The Executive Order further spells out that federal agencies are to inventory archeological and historical resources on lands under their control or affected by their programs and nominate to the National Register all resources which meet the criteria. Federal agencies are also to exercise due caution with respect to cultural resources, give them appropriate and adequate consideration during planning, and do whatever is possible with regard to protecting and, when necessary, recovering those resources.

The Secretary of the Interior is to provide technical and advisory assistance to other agencies in their accomplishment of these goals and is to review agency procedures.

Archaeological Conservation Act of 1974 (Amendment of 1960 Reservoir Salvage Act)

(Public Law 93-291, 88 STAT. 174): This act specifically provides for the preservation of historical and archaeological data (including relics and specimens) which might otherwise be irreparably lost or destroyed as a result of any alteration of the terrain caused as result of any federal construction project or federally licensed activity or program. Under this act project funds are to be made available to cover the cost of survey, recovery, analysis and publication. For projects involving more than \$50,000, no more than one percent of the total figure will be provided for archaeology. For projects involving less than \$50,000 there is no established limit.

The Tax Reform Act of 1976 (Public Law 94-455 section 2124)

This act provides fiscal incentives in the form of tax breaks for private owners of National Register properties as a means of encouraging them to preserve these properties. It also denies tax benefits to those owners who demolish historic structures.

36 CFR 1202

Title 36, Code of Federal Regulations, Part 1202, "National Register of Historic Places". Herein are stated the procedures to be followed by the states and all federal agencies in nominating properties to the National Register of Historic Places. Included is information on responsibilities of federal agencies, the nomination circuit, a discussion of the 1966 Historic Preservation Act and Executive Order 11593, and a list of state historic preservation officers.

36 CFR 800

Title 36, Code of Federal Regulations, Part 800, "Protection of Historic and Cultural Properties". Herein are the step-by-step procedures which must be followed by all Federal Agencies to ensure that undertakings under their control are in compliance with the 1966 Historic Preservation Act and Executive Order 11593. Includes the criteria for determining effect and adverse effect; the agency procedures and the criteria for inclusion of cultural resources on the National Register of Historic Places.

American Indian Religious Freedom Act

(Public Law 95-341, 92 STAT 469, 42 U.S.C. 1996). The purpose of this act is to insure that the policies, procedures and actions of federal agencies do not infringe upon the constitutional right of free exercise of religion by Native Americans.

Archeological Resources Protection Act of 1979

(Public Law 96-95, 93 STAT 721, 16 U.S.C. 470 aa-ii). This act provides for sanctions against persons convicted of removal or defacement or traffic in archeological resources originating on public lands. In addition, there are provisions for rewards for information and for forfeiture of equipment used in connection with a violation. It also contains the basic requirements for permits for undertaking archeological excavations on public lands.

The Endangered Species Act of 1973

(Public Law 93-205, 16 U.S.C. 1531-43 as amended by Public Law 94-359.) The Act provides for the protection of endangered species and plants and a means whereby the ecosystems upon which they depend may be preserved.

Floodplain Management and Wetlands Protection Procedures

(45 Fed. Reg. 35917 (NPS), 44 Fed. Reg. 36119 (Departmental))
These procedures issued by the Department and the NPS Implement Executive Orders on Floodplain Management and Protection of Wetlands. The objectives of these procedures are to avoid to the extend possible the long and short term adverse impacts associated with the occupancy and modification of floodplains and wetlands and to avoid direct or indirect support of development in floodplains and wetlands wherever there is a practicable alternative. Where there is no practicable alternative the procedures focus on mitigation of the adverse effects of any action. Many historic buildings are located in floodplains and actions may be required to protect them, and any historic furnishings, as well as the visitors.

Glossary of Cultural Resource Management Terminology

Advisory Council (on Historic Preservation): Established in Section 201 of the 1966 Historic Preservation Act. Its members, include representatives from cabinet-level offices and presidential appointees from outside the federal government. The Council, among other activities, advises the President and the Congress on matters relating to historic preservation; recommends measures to coordinate activities of federal, state, and local agencies; and advises on the dissemination of information pertaining to such activities.

The most immediate importance of the Advisory Council is its function as a "watchdog" of all federal actions affecting cultural resources. It holds this function as a result of Section 106 of the 1966 Historic Preservation Act, which requires all federal agencies to afford the Advisory Council a reasonable time to comment upon activities affecting cultural resources.

Archeological Clearance: An undertaking is said to have archeological clearance when the area to be impacted by the undertaking has been investigated by a professional archeologist and found to possess no significant archeological remains. The term also applies when archeological remains are found in the area of an undertaking, but the agency agrees to carry out the project in such a way that the archeological evidence is preserved.

Cultural Resources: Sites, structures, or objects which result from the action of man; the material evidence of cultural process. Unlike many natural resources, cultural resources are non-renewable and are subject to loss through neglect.

Cultural Resources Management Component: This is a portion of the General Management Plan which, at minimum, should (1) summarize human occupation of the park area; (2) summarize past cultural research; (3) place both the cultural sequence and research in the context of the surrounding region; (4) provide a background for the evaluation of the plan in light of its impacts upon National Register or eligible properties. NPS-28, Chapter 4 page 3.

Determinations of Effect and of Adverse Effect: These are professional objective evaluations of the impacts of projects upon identified cultural resources. Both "Effect" and "Adverse Effect" determinations are specifically defined by sets of criteria found in 36 CFR 800. The criteria of effect and adverse effect is 36 CFR 800.3. These determinations are part of the agency procedures outlined in 36 CFR 800, and which must be followed by all federal agencies for projects involving cultural resources. In the National Park Service, these determinations are made at the regional level.

HCRS-Heritage Conservation and Recreation Service: This Department of the Interior agency incorporates the National Natural Landmarks Program and Office of Archeology and Historic Preservation of the National Park Service, including the Historic Preservation Grants Program and the National Register of Historic Places. Most of the responsibilities of the former Bureau of Outdoor Recreation are absorbed by HCRS. In general, HCRS identifies, classifies, and maintains registers for Heritage resources, formulates policies and programs for their preservation, and coordinates Federal, State, and local resources and recreation policies and actions. The HCRS does not have land management responsibility.

Historic Furnishing Report: Directs the furnishing of all or part of a historic or prehistoric structure to reflect the periods of prime historical significance identified in planning documents. It is prepared by appropriate professional staff and approved by the Regional Director after review by the park, centers, and Washington office. NPS-28 Chapter 5 page 22.

Historic Resource Study: Represents the collection and evaluation of data and the presentation of the research findings concerning resources of an area or parts thereof. It is mission-oriented and a part of the information base. NPS-28 Chapter 5 page 6.

Historic Structure Preservation Guide: This is a reference document specifically designed to fit the needs of a structure that has been restored, reconstructed, or preserved "as is." It guides park management in carrying out routine maintenance and minor repairs. It is usually prepared at the conclusion of treatment. NPS-28 chapter 6 page 1.

Historic Structures Report (HSR): This document presents such findings of historical, archeological, and architectural study and investigation of a historic structure and its settings that are necessary to permit support work on the structure, such as preservation, restoration, or reconstruction. All historic structure development projects must be supported by an HSR. NPS-29 chapter 5 page 9.

LCS -- List of Classified Structures: The LCS is a listing of all structures in the National Park System that merit preservation because of historical, architectural, archeological, or esthetic values and that are determined to be practicable of preservation. The purpose of the LCS is to establish the order of significance of each historic structure, to fix a level of treatment for each structure, and to provide a basis for subsequent planning, programming, and budgeting. Management Policies Part V-5.

Management Policies: Chapter 5 of the NPS Management Policies outlines the scope of cultural resource management and preservation undertaken by the Service.

Memorandum of Agreement: Part of the Section 106 process. When it has been determined that an undertaking will have an adverse effect upon properties in or eligible to be in the National Register, the federal agency official, the State Historic Preservation Officer, and the Advisory Council on Historic Preservation attempt to find an alternative means of carrying out the project which will mitigate the adverse effects. This alternative means of carrying out the project is formalized in an agreement called the "Memorandum of Agreement." It is signed by the three parties, and is binding upon the federal agency. The Memorandum of Agreement must be ratified by the Executive Director of the Advisory Council before the federal project can proceed. See 36 CFR 800.6(c).

Mitigation: In this context, the term refers to the avoidance or amelioration of the adverse effects of a given undertaking upon the qualities of identified cultural resources which make them eligible for inclusion in the National Register of Historic Places. See 36 CFR 800.4 and 800.6(b)(5).

NPS-28, Cultural Resources Management Guidelines: This document shows what research, plans and treatments are needed for cultural resources. It guides management of cultural resources in compliance with appropriate environmental and historic preservation legislation and regulations.

National Architectural and Engineering Record (NAER): This is a combination of the Historic American Engineering Record (HAER) and the Historic American Buildings Survey (HABS). The program's intent is to produce a thorough archival record of both buildings and engineering examples which comprise the heritage of the built environment of the United States. This program is administered by HCRS.

National Historic Landmark: A site, building, or object of national significance. Originated in the 1935 Historic Sites Act. This act authorized the National Park Service to survey the nation for sites, building or objects of national significance, and to record and carry out necessary research on them. The 1966 Historic Preservation Act placed all National Historic Landmarks on the newly-created National Register of Historic Places.

National Register of Historic Places: A listing established by the 1966 Historic Preservation Act which extended the 1935 National Landmarks listing. The National Register consists of sites, structures, or objects of local, state, or national significance. To be eligible for inclusion in the National Register, properties must meet the criteria found in 36 CFR 800 or 36 CFR 1202.6.

Preliminary Cultural Resources Management Plan: Is a document which (1) identifies and evaluates known cultural resources and needs; (2) identifies and sets priorities for research and planning needs in the area of cultural resources; and (3) proposes interim or final treatment and use. It provides basic data for compliance with Executive Order 11593. It is an interim document used until a satisfactory information base is acquired and a General Management Plan and Cultural Resources Management Component are complete. NPS-28, Chapter 3 page 1.

Programmatic Memorandum of Agreement (PMA): These agreements with the Council allow agencies to group certain classes of actions under Section 106 and review them in a specialized manner (36 CFR 800.8). The National Park Service has such an agreement with the Council on the planning process as described in NPS-2.

Salvage: The removal and preservation of cultural resources from an area to be impacted. Once a standard technique in cultural resource management, it now constitutes a "last resort," being far less desirable than preservation in place of the cultural resources.

Section 106, or "106": This applies to the process stated in Section 106 of the 1966 Historic Preservation Act. Section 106 requires the responsible federal agency official to take into account the effect of an undertaking upon any cultural resources in or eligible for inclusion in the National Register of Historic Places. The agency official is also required to permit the Advisory Council on Historic Preservation (established by this act) a reasonable opportunity to comment with regard to this undertaking. The Section 106 process is necessary only when cultural resources in or eligible to be in the National Register of Historic Places appear to be affected in any way by a federal or federally-controlled or licensed undertaking. The step-by-step process is described in 36 CFR 800.4 -- "Agency Procedures."

SHPO - See State Historic Preservation Officer.

Significance: Dependent upon context, all cultural resources can be considered significant. However, in terms of legal compliance with federal historic preservation legislation, "significance" means the degree to which cultural resources meet the criteria for inclusion in the National Register of Historic Places.

State Historic Preservation Officer (SHPO): The official within each state, authorized by the state at the request of the Secretary of the Interior, to act as liaison for matters relating to undertakings of federal agencies that affect cultural resources with the state. This position was originated in the 1966 Historic Preservation Act.

Survey, or Executive Order 11593 Survey: This means the careful and thorough investigation of a particular area either under direct federal ownership or indirect federal control. Moreover, the survey must be carried out by qualified cultural resource personnel with training and experience in archeology, history or architecture. The nature of the area and type of cultural resources known to exist will determine the professional backgrounds needed. The professional cultural resource personnel must conduct background research in the area, visit it first-hand, and locate, identify, and evaluate (using National Register criteria) all cultural resources. The results of these actions must be spelled out specifically in a report submitted to the sponsoring federal agency. This report must include site specific data, application of National Register criteria, and statements of eligibility, non-eligibility, and graphics (especially maps) to be considered adequate.